SUMMONS ADJOURNED TO OPEN COURT.

Lim Chor Pee for the plaintiff-respondent.

Tan Boon Teik (Solicitor-General) for the defendant-applicant.

Cur. Adv. Vult.

Chua J.: The plaintiff in this case was a detective police constable of the Singapore Police Force. On the 18th May, 1963, after a disciplinary proceeding on a charge of "committing excess of duty by submitting false information against a male Chinese", the plaintiff was informed that he was dismissed from the Police Force with immediate effect. On the 10th June, 1963, the plaintiff appealed to the Commissioner of Police against his dismissal and on the 29th June, 1963, the Commissioner of Police dismissed the plaintiff's appeal.

The plaintiff on the 4th January, 1965, issued a writ of summons against the Commissioner of Police praying for a declaration that his dismissal from the Singapore Police Force "was illegal, void, inoperative and of no effect."

The writ was served on the Commissioner of Police who entered conditional appearance. On the 16th January, 1965, the Commissioner of Police took out a summons-in-chambers:

> "for an order that the service of the writ of summons in this action on the said defendant and all subsequent proceedings in this action may be set aside on the ground that the pretended service of the writ of summons herein on the said defendant was irregular and he was not bound to appear thereto."

The complaint of the plaintiff as disclosed in the statement of claim was that he "was never given any adequate notice of the charge nor was he given any opportunity to rebut the charge and the evidence against him."

The summons came before me. The Solicitor-General appeared for the Commissioner of Police. After hearing the parties I dismissed the application with costs. The Solicitor-General then requested that I hear further argument in regard to the application and the matter was adjourned to open court for further argument.

The contention of the Solicitor-General was that the Commissioner of Police was not a proper defendant in this suit as the complaint of the plaintiff was not against the Commissioner of Police but against the officer who held the inquiry.

The position of the Commissioner of Police in respect of disciplinary proceedings should be stated. By section 27(1) of the Police Force Ordinance (No. 32 of 1958) where a subordinate officer is found guilty of the charge by a commanding officer or any other officer authorised by him to conduct disciplinary proceedings, the commanding officer may order that the subordinate officer be dismissed. By section 27(3) the subordinate officer may appeal against the finding or punishment to the Commissioner of Police.

Now, the Commissioner of Police in his letter to the plaintiff dismissing his appeal said:

> "I have studied your grounds of appeal in conjunction with the record of the disciplinary proceedings and find that you were given a fair and proper trial in accordance with Police Regulations. I further find that there is no reason why the conviction and punishment of dismissal should not stand."

It seems to me that the complaint of the plaintiff is not only against the officer who held the inquiry, the commanding officer who dismissed him but also against the Commissioner of Police for dismissing his appeal.

It is to be noted that the Commissioner of Police in his letter to the plaintiff said that he found after studying the ground of appeal and the record of the disciplinary proceedings that the plaintiff was given a fair and proper trial. It would appear that if the allegations of the plaintiff are true then the Commissioner of Police contributed to the denial of natural justice and it seems to me that the plaintiff has an arguable case against the Commissioner of Police for dismissing his appeal and that the Commissioner of Police is a proper defendant in this case.

The application of the defendant is dismissed with costs.

Application dismissed.

Solicitors: *Chor Pee & Hin Hiong.*

GOVINDA RAJU & ANOR. v. LAWS

[O.C.J. (Raja Azlan Shah J.) December 10, 1965]

[K.L. — Civil Suit No. 401 of 1964]

Damages — Personal injury — Leg — 3" shortening.

Negligence — Failure to observe provisions of Highway Code — Failure to give way to through traffic when turning right — Contributory negligence — Agony of the moment — Damages.

Road Traffic — Highway Code — Failure to observe provisions of.

This was a claim for damages in respect of personal injuries sustained by both plaintiffs in a road accident. It appeared that the defendant was driving along a road and intended to turn to the right. He stopped, leaving sufficient room for vehicles to pass on his left, and when the oncoming traffic was clear he turned right into a lane. The plaintiff's motorcycle coming in the opposite direction saw the car swerving into his path and he swerved to the right to avoid the accident but knocked into the rear near side of the car. As a result the first plaintiff and his pillion rider the second plaintiff were injured. The second plaintiff suffered a fracture of the shaft of the right femur and 3" shortening. General damages were agreed at $27,000. The first plaintiff suffered laceration of the scalp and bleeding from the right ear. Section 18 of the Highway Code provides that when turning left or right drivers must always give way to through traffic.

Held: (1) on the facts the defendant had failed to keep a proper lookout before he swerved to the right and therefore he was negligent;

(2) what was done or omitted to be done by the plaintiff in the agony of the moment cannot be fairly treated as negligence and therefore there was no contributory negligence on the part of the plaintiff;

(3) in the circumstances, general damages for the first plaintiff would be assessed at $1,000.

CIVIL SUIT.

Denis Murphy for the plaintiffs.

R. H. V. Rintoul for the defendant.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is a claim for damages in respect of personal injuries sustained by both the plaintiffs in a road accident. At the material time, the first plaintiff was the rider of a motor-cycle which was involved in the accident with a car driven by the defendant. The second plaintiff was a pillion rider on the motor-cycle.

With regard to the second plaintiff, general damages were agreed at $27,000 and special damages at $3,295. This plaintiff is 23 years old and earned $180 as a salesman in a drug store. He suffered a fracture of the shaft of the right femur and 3 inches shortening. He was admitted to hospital for about three months and continued as an out-patient for about one year. He now walks with a limp. The main limitation is in the external rotation. He cannot squat fully because of the injury to his femur 8 inches above the knee joint.

With regard to the first plaintiff, special damages were agreed at $70. The substantial question for determination is whether negligence had been established, and if so, whether there was contributory negligence on the part of the plaintiffs.

The plaintiffs' case is that on 7th December, 1963, between 8.00 and 8.30 p.m. they were riding a motor-cycle along Ampang Road in the direction of Kuala Lumpur. They were travelling at about 27 to 28 miles per hour on their correct side of the road and between 3 to 4 feet from their left grass verge. The road is 21 feet wide and has a speed limit of 30 miles per hour. The only traffic ahead of them was a motor-cycle which was about 60 yards away. There was a row of on-coming cars. As soon as the first car had passed them, the first plaintiff said that he saw the defendant's car, which was then about 15 yards from him, swerving into his path. The plaintiff also swerved to his right to avoid the accident. He said that he could not swerve more to the right because there was more on-coming traffic. The motor-cycle crashed into the left near-side of the car. In cross-examination, the first plaintiff said that when he saw the defendant's car swerving about 15 yards away from him he tried to apply his brakes but he could not remember if he tried to apply them hard enough. He also said that at the time of impact he was nervous and did not know what to do. He further continued that as the row of cars approached him he did not slow down his speed.

The defendant's version is as follows. At the material time he was driving a Simca station-waggon, the overall length of which is 15 feet 1 inch and overall width is 5 feet 3 inches. He was returning from the golf club and was travelling along Ampang Road in order to visit a friend whose house lay on his right-hand side of the road. He said that before he came to a side lane leading to the house he stopped about 29 feet away, leaving sufficient room for vehicles to pass on his left. On his right there was a fairly heavy stream of on-coming traffic. He said he had his trafficator on, indicating he was turning to the right. While he was stationary, a vehicle passed him on his left. He then concentrated on the on-coming traffic. When the road appeared to be clear, he put his car in gear and proceeded to turn into the lane leading to the house. When the greater part of his vehicle had cleared the bitumen part of the road, leaving about 4 to 5 feet which was at an angle on the road, his rear near-side was knocked. He came out of his car and saw a motor-cycle lying on its side and the plaintiffs lying on the road. He rang for the ambulance and later directed traffic. It was a fairly straight stretch of road and was well lighted. In cross-examination he said that he did not see the motor-cycle at all and gave no explanation as to why he did not see the motor-cycle in question. He also said that he was stationary for not less than 30 seconds and not more than a minute.

Section 59 sub-section (4) of the Road Traffic Ordinance, 1958, enacts:

> "Failure on the part of any person to observe any provisions of the Highway Code.....may in any proceedings, whether civil or criminal, be relied on by any party to the proceedings as tending to establish or to negative any liability which is in question in those proceedings".

Section 18 of the Highway Code states:

> "When turning left or right drivers must always give way to through traffic, including pedestrians".

Applying these tests, it is clearly established that the defendant failed to keep a proper look-out before he swerved to the right, resulting in the accident. Indeed, he admitted this in evidence. From that it can be reasonably inferred that he was negligent in the way he did.

It was urged upon me that the plaintiffs contributed to the negligence of the defendant by driving at an excessive speed in the circumstances thereby failing to avoid the accident by going round the motor-vehicle when a part of

it was some 4 to 5 feet on the bitumen. I cannot accept this proposition in the light of all the surrounding circumstances. It is not the case of a car being stationary and leaving some 4 to 5 feet of it on the bitumen. It is the case of a moving vehicle trying to turn right in the path of an on-coming motor-cycle and intending to enter a lane to a house. The plaintiff saw the motor-vehicle swerving into his path. Perplexed by being exposed to the danger created by the defendant he also swerved to his right in an attempt to avoid the accident but failed. To my mind, when a plaintiff is perplexed or agitated when exposed to danger by the wrongful act of a defendant, it is sufficient if he shows as much judgment and control in attempting to avoid the accident as may reasonably be expected of him in the circumstances. To that extent I am satisfied that the plaintiff had so acted in the circumstances. What is done or omitted to be done in the agony of the moment cannot be fairly treated as negligence. I therefore hold that there is no contributory negligence on the part of the plaintiffs.

The only point to consider now is general damages as claimed by the first plaintiff. He was admitted to hospital for eleven days' suffering from laceration of the scalp 2 inches long and bleeding from right ear. Having considered the authorities, I would assess general damages at $1.000. There will be the usual costs to the plaintiffs.

Judgments for the plaintiffs.

Solicitors: *Murphy & Dunbar; Shearn Delamore & Co.*

KHAW KAI-BOH v. STRAITS ECHO PRESS & ANOR.

[O.C.J. (Ong Hock Thye F.J.) February 9, 1966]

[K.L. — Civil Suit No. 1430 of 1965]

Libel — Newspaper article — Publication of apology in newspaper — Discontinuance of action.

Newspaper — Free press — Responsibilities of.

Constitutional law — Fundamental rights — Independent judiciary.

The defendants in this case published a statement in their newspaper which was alleged to be libellous of the plaintiff. The next day they published an apology and beyond the necessary formal step of entering appearance to the writ, they took no further action to justify or defend their action.

Held: in the circumstances of the case and in view of the conduct of the defendants an order would be made for the discontinuance of the action.

CIVIL SUIT.

Ralph Hoffman for the plaintiff.

Eusoffe Abdoolcader for the defendants.

Ong Hock Thye F.J.: The defendants published an apology the day after the statement complained of appeared in their paper, and, beyond the necessary formal step of entering appearance to the writ, the defendants have taken no further step in attempting to justify or defend what is indefensible. A free press in a democratic society has certain responsibilities. The conduct of the defendants plainly shows their awareness of such responsibilities. Today's proceedings are the culmination of an *amende honourable* and I must give due credit to the defendants for doing what is just and proper.

This case points a moral — that persons in all walks of life may confidently expect equal justice from an indepedent Judiciary, pledged to maintain the Rule of Law. Every person in the land, from the humblest to the most exalted, has a right to expect the same protection by the courts of his fundamental and civil rights. He is entitled to no less, he can claim no more. The plaintiff is a Cabinet Minister and he has shown his faith in the Judiciary by seeking redress for a wrong through the ordinary process of a court of law. I now make an order for discontinuance of this action.

Order accordingly.

Solicitors: *Allen & Gledhill; Presgrave & Matthews.*